

In the Matter of the Application of)  
KAUPULEHU WASTE WATER COMPANY )  
For Approval of an Expansion of its )  
Service Area )

Commission, State of Hawaii.  
Karen Digest.

OF THE STATE OF HAWAII

In the Matter of the Application of)  
KAUPULEHU WASTE WATER COMPANY )  
For Approval of an Expansion of its) )  
Service Area ) )

Docket No. 2006-0030

Decision and Order No. 23294

### DECISION AND ORDER

By this Decision and Order, the commission approves KAUPULEHU WASTE WATER COMPANY's ("Applicant") request for commission approval to expand its existing service territory, as described herein, pursuant to Hawaii Revised Statutes ("HRS") § 269-7.5.

I.

## Background

A.

Applicant

Applicant, a Hawaii limited partnership, is a public utility providing wastewater service in the Kaupulehu area of Hawaii County, Hawaii. It obtained its Certificate of Public Convenience and Necessity ("CPCN") to operate as a public utility by Decision and Order No. 14760, filed on July 1, 1996, in Docket No. 95-0278.

Applicant's general partner is Kaupulehu Utility Corporation, a Hawaii corporation. Applicant's limited partner

is Kaupulehu Makai Venture ("KMV"), a California general partnership.

B.

Application

By application filed on February 16, 2006,<sup>1</sup> Applicant seeks commission approval to expand its existing service territory to include parcels 10B, 11, 12, 13, 15, 16A, 16B and 17 (Na Hale at Kahikole) ("the Property"), that are adjacent to Applicant's service area.<sup>2</sup>

Applicant states that KMV is developing the Hualalai Resort area and has asked Applicant to expand its service area to provide wastewater services to the Property. Applicant asserts that at this time there are no other wastewater service providers (i.e., the County of Hawaii or other private wastewater companies) who provide or are willing to provide

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<sup>1</sup>Application, Exhibits A-B, Verification and Certificate of Service, filed on February 16, 2006 ("Application"). Applicant served a copy of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this docket, pursuant to HRS § 269-51. On March 8, 2006, the Consumer Advocate submitted the Division of Consumer Advocacy's Preliminary Statement of Position. On August 7, 2006, the Consumer Advocate served information requests ("IRs") upon Applicant. On August 29, 2006, Applicant responded. On November 30, 2006, the Consumer Advocate filed its Statement of Position.

<sup>2</sup>A map of Applicant's existing service territory as well as the parcel of land that Applicant seeks to include in its service territory, is attached as Exhibit A to the Application. A list of the relevant additional parcels is contained in Exhibit B to the Application.

wastewater service in the proposed expansion areas in the near future.<sup>3</sup>

The current capacity of Applicant's wastewater facility is in the range of 200,000 to 220,000 gallons per day ("gpd").<sup>4</sup> KMV has agreed, at its expense, to complete modifications to the facility that will increase the maximum average daily flow capacity to approximately 250,000 to 270,000 gpd.<sup>5</sup> The modifications are expected to be completed by June 30, 2006.<sup>6</sup> At a later date, KMV may seek the approval of the commission to transfer the modifications to the facility to Applicant for value in exchange for additional partnership interests in Applicant and not as a contribution in aid of construction.<sup>7</sup>

Applicant admits that "[w]hile the expanded capacity of the [facility] will be adequate to serve the projects in the service area expansion, it may not be sufficient to cover the expected needs of the undeveloped projects in the existing service area still owned by KMV. As a result, KMV has acknowledged that Applicant will only be required to provide service to these undeveloped projects up to the maximum capacity in the [facility] from time to time."<sup>8</sup> Moreover, "[Applicant] is planning to construct a new, replacement wastewater treatment

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<sup>3</sup>Response to CA-IR-3.

<sup>4</sup>Application at 2, ¶ 6.

<sup>5</sup>Application at 3, ¶ 6; and Response to CA-IR-8a.

<sup>6</sup>Application at 3, ¶ 6.

<sup>7</sup>Id.

<sup>8</sup>Id. at 3, ¶ 7.

facility that is scheduled to be operational by the end of 2008."<sup>9</sup> Applicant will not service any currently undeveloped projects within the existing territory until the replacement wastewater treatment facility has been completed.<sup>10</sup>

There is no current plan to file any rate increase application due to the proposed modifications.<sup>11</sup>

C.

Consumer Advocate's Statement of Position

On November 30, 2006, the Consumer Advocate filed its Statement of Position stating that it does not object to commission approval of Applicant's request to expand its existing service territory.

In reviewing Applicant's request, the Consumer Advocate considered the following: (1) whether Applicant has the ability to provide wastewater service to customers in the existing service territory as well as the Property, and (2) whether expansion of the service territory, as proposed by Applicant, would negatively affect the rates charged to Applicant's existing customers.

With respect to the first issue of whether Applicant has the ability to serve its existing territory as well as the Property, the Consumer Advocate determined that, based on average daily wastewater flow estimates and forecasted wastewater flows,

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<sup>9</sup>Response to CA-IR-2a.

<sup>10</sup>Response to CA-IR-5e.

<sup>11</sup>Response to CA-IR-16.

the existing capacity of the facility is not sufficient to receive and treat the wastewater generated by present and future customers in Applicant's existing service territory, the Property, and future developments within the existing territory.<sup>12</sup> Applicant, however, has secured KMV's agreement to complete modifications to the wastewater treatment plant, which will serve the needs of Applicant's existing customers and the expanded service territory. In addition, Applicant plans to construct a replacement wastewater treatment facility that will be completed by the end of 2008, and will have the capacity to service the current service territory and the proposed expanded territory.<sup>13</sup> Applicant will not service the undeveloped projects within the existing territory until the replacement wastewater treatment facility has been completed.<sup>14</sup>

For the second issue, the Consumer Advocate considered whether expanding Applicant's service territory would negatively affect the current rates for wastewater service being charged to existing customers. According to the Consumer Advocate, there may be an impact in future rates as Applicant proposes to both modify and replace its wastewater treatment plant. Specifically, KMV has agreed to modify the wastewater treatment plant and, upon commission approval, may transfer the modifications to Applicant for value in exchange for additional partnership interests in Applicant and not as a contribution in aid of construction

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<sup>12</sup>See Statement of Position at 3-6.

<sup>13</sup>Id.

<sup>14</sup>Id.

("CIAC"). The estimated costs of the modifications are \$658,820,<sup>15</sup> which may be recorded in plant-in-service with no offset in CIAC at Applicant's next rate proceeding.

The Consumer Advocate notes, however, that "there are two factors that may support the inclusion of the modification costs in rate base."<sup>16</sup> The first is that the commission has approved similar transactions in which KMV transferred assets to Applicant for equity interest. Second, the wastewater flow from the existing customers appears to be the primary reason for the need for the proposed modifications.<sup>17</sup> As a result, the Consumer Advocate concludes that it may be reasonable that a portion of the costs of the modifications be collected from existing ratepayers. The Consumer Advocate, however, states that the determination of whether the cost of the wastewater treatment plant modifications should be included in rate base should be made in Applicant's next rate proceeding.

Based on the foregoing, the Consumer Advocate recommends that KMV and Applicant be ordered to notify prospective customers of the intent to recover the cost of the modifications through the rates charged for wastewater services.<sup>18</sup>

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<sup>15</sup>See Statement of Position at 7.

<sup>16</sup>See Statement of Position at 7.

<sup>17</sup>See Statement of Position at 8.

<sup>18</sup>See Statement of Position at 11.

## II.

### Discussion

HRS § 269-7.5 states, in relevant part:

(a) No public utility, as defined in section 269-1, shall commence its business without first having obtained from the commission a certificate of public convenience and necessity. Applications for certificates shall be made in writing to the commission and shall comply with the requirements prescribed in the commission's rules. The application shall include the type of service to be performed, the geographical scope of the operation, the type of equipment to be employed in the service, the name of competing utilities for the proposed service, a statement of its financial ability to render the proposed service, a current financial statement of the applicant, and the rates or charges proposed to be charged including the rules and regulations governing the proposed service.

(b) A certificate shall be issued to any qualified applicant, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the terms, conditions, and rules adopted by the commission, and that the proposed service is, or will be, required by the present or future public convenience and necessity; otherwise the application shall be denied. Any certificate issued shall specify the service to be rendered and there shall be attached to the exercise of the privileges granted by the certificate at the time of issuance and from time to time thereafter, such reasonable conditions and limitations as a public convenience and necessity may require. The reasonableness of the rates, charges, and tariff rules and regulations proposed by the applicant shall be determined by the commission during the same proceeding examining the present and future conveniences and needs of the public and qualifications of the



applicant, in accordance with the standards set forth in section 269-16.

. . . . .

HRS § 269-7.5. Because Applicant's authority pursuant to its CPCN does not currently authorize it to provide wastewater service to the Property, commission approval is required to amend Applicant's service territory to include the expanded service area.

Here, Applicant appears to be fit, willing, and able to provide the expanded wastewater service, and provision of the service is required by the present or future public convenience and necessity. After modifications, Applicant will be able to<sup>19</sup> provide the wastewater service<sup>20</sup> to the proposed additional service area, and will be able to do this without detriment to the level and quality of service currently being provided to its existing customers. Applicant will have a maximum average daily flow capacity of 250,000 to 270,000 gpd. Its current maximum average daily flow capacity is approximately 200,000 to 220,000 gpd. The Property will increase the wastewater demand by only 19,000 gpd. Therefore, Applicant will have sufficient capacity to handle the estimated increase in wastewater flow from the addition of the Property.

The commission, moreover, notes that the Property is adjacent to properties currently being serviced by Applicant, thereby facilitating the provision of service to the Property.

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<sup>19</sup>Application, at 3, ¶ 6.

<sup>20</sup>Application, at 3, ¶ 6.

In addition, the occupants of the Property must be afforded a means to treat their wastewater, and the commission is unaware of any other wastewater utility (i.e., the County of Hawaii or other private wastewater companies) willing or able to service the Property. Accordingly, for the foregoing reasons, the commission concludes that Applicant's request for commission approval to expand its existing wastewater service territory, as shown in Exhibit A to the Application, should be approved.

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. Applicant's request for commission approval to expand its existing service territory, as reflected in Exhibit A to the Application, is approved.

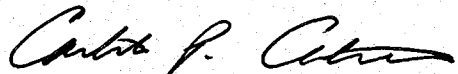
2. Applicant shall notify prospective customers of any intent to recover the cost of modifications to its wastewater treatment plant through rates charged for wastewater service.

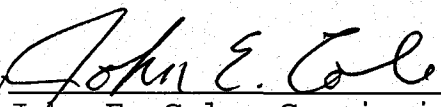
3. Applicant shall promptly file with the commission its revised tariff sheets, incorporating its expanded service territory. The revised tariff sheets will take effect upon filing.

4. Failure to comply with these requirements may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

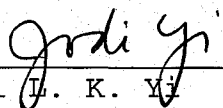
DONE at Honolulu, Hawaii MAR 13 2007.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

APPROVED AS TO FORM:

  
Jodi L. K. Yi  
Commission Counsel

2006-0030.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23294 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: MAR 13 2007